

Friends of Park County

P.O. Box 23, Pray, Montana 59065

Promoting thoughtfully planned growth in order to protect and enhance Park County's vibrant communities, sustainable working lands, and healthy natural resources.

June 11, 2021

Honorable Members of the City Commission
Courtney Lawellin, City Attorney
Mike Kardoes, City Manager
[hand delivered June 14, 2021]

Dear Commissioners, Ms. Lawellin and Mr. Kardoes,

Friends of Park County is writing to alert you to our concerns about Resolution No. 3896, a Resolution of the City Commission of the City of Livingston, Approving of Agreement with Yellowstone Community Partners, Inc., passed and adopted October 1, 2007, and the issue before the City of Livingston as to whether to approve an assignment of the Agreement with Yellowstone Community Partners, Inc. to a third party.

Friends of Park County and Park County Environmental Council jointly retained Steve Woodruff, Huppert, Swindlehurst and Woodruff, P.C. Livingston, Montana and Jecyn Bremer, Gallik, Bremer & Molloy, P.C. Bozeman, Montana, to examine the following issues;

Issue 1: Is the Agreement Between Yellowstone Community Partners, LLC, Headwaters Walking Horse Ranch, LLC and the City of Livingston (“Agreement”) valid?

Issue 2: Would the assignment violate the Montana Subdivision and Platting Act?

Issue 3. Can the City Commission of the City of Livingston reasonably withhold consent for the assignment of the Agreement?

Attached hereto is the full opinion rendered by our legal counsel. Our legal counsel, both of whom are experienced in land use law, have opined and rendered the following legal opinion on the above three issues:

Issue 1: No, because the 15-year preliminary plat approval was legally invalid.

Based upon the existing law in effect at the time the preliminary plat approval/contract was entered into [76-3-610 MCA] and relevant case law, the approval of the contract in question "...must be in force for not more than 3 calendar years..." , after which an applicant must seek an extension of preliminary plat approval to extend the approval beyond the original term. By controlling case law, the City and the applicant cannot by agreement disregard the plain language of the statute and provide another term for approval, beyond what is allowed by statute. Furthermore, it is undisputed that no extension of preliminary plat approval was sought by the Developer or approved by the City. Therefore, the Agreement is unlawful as a matter of law, and the preliminary plat approval is now lapsed and void.

Issue 2: Yes, because the plat approval was unlawful and has expired.

Based upon the existing law in effect at the time the preliminary plat approval/contract was entered [76-3-610 MCA] and relevant case law, the assignment is contrary to the public interest and the purposes and intent of the Montana Subdivision and Platting Act ("Act"). The Montana Supreme Court has routinely held that "[n]o rule of statutory construction is more readily applied by the courts than [the rule] that public statutes dealing with the welfare of the whole people are to have a liberal construction." "Liberal construction" in this case mandates protecting the public's interest in timely and relevant review of any proposed development, rather than reliance on a legally invalid Agreement entered 14 years ago.

Issue 3: Yes, because the Agreement was unlawful and has expired.

Based upon the existing law in effect at the time the preliminary plat approval/contract was entered [76-3-610 MCA] and relevant case law, Montana law enforces provisions limiting the assignment of a contract. When considering the reasonableness of a refusal to consent to an assignment, reason, fairness, and good faith must be the guide; whim, caprice, or opportunism, however expedient to the ends, will not suffice.

There is no reasonable or rational basis by which the City could or should consent to the proposed assignment. Not only is it reasonable for the City to withhold consent the assignment, but it is also the City's legal obligation, as the Agreement was and is unlawful and contrary to the plain language of the statute.

Friends of Park County hereby requests that this letter be made a record of the proceedings and a copy provided to each member of the City Commission before their June 15th public meeting.

We further request an opportunity to formally present our concerns about Resolution No. 3896 to the City Commission at its meeting on June 15, 2021. We respectfully request the opportunity to make public comment before the Commission convenes in Executive Session in order that our concerns and information can be considered together with information provided by or to the City Manager and City Attorney before the Resolution is formally introduced for action by the Commission. Furthermore, FPC hereby requests that all such information provided by or to the City Manager and City Attorney, including without limitation, any legal opinions on the above three issues or any other issue relating to Resolution # 3896 and the underlying subdivision approval/contract, be made public and provided forthwith to FPC.

Thank you for your consideration of these requests.

Sincerely,

Frank Schroeder
Chair, Friends of Park County

Attachments: Legal Opinion "City of Livingston/Heart K Land & Cattle Co."

Cc Members, City of Livingston Planning Board
Michelle Uberuaga, Executive Director, PCEC